C.A.No.

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IN THE HIGH COURT OF CHHATTISGARH AR BILASPUR

WRIT PETITION NO 645 /2002

PETITIONER ... **V.B.BALI** (VIJAY BAHADUR BALI) S/O LATE SHRI R.K.G. BALI AGED 58 Yrs.
QR.NO.10/B
STREET NO.6
SECTOR-4, BHILAI NAGAR(CG)

Advt. 4.04.02

VERSUS

RESPONDENTS ... 1. **THE MANAGING DIRECTOR**
STEEL AUTHORITY OF INDIA LTD.
BHILAI STEEL PLANT
BHILAI (C.G)

2. **LABOUR COURT**
UTTAI ROAD,
DURG (C.G)

3. **INDUSTRIAL COURT**
SHANKAR NAGAR
RAIPUR (C.G)

P.R. No. 6V 3/02
Prepared by Shri Bhagwat Sahu
dated 6.V.02

IN THE MATTER OF ARTICLE 226 & 227 OF CONSTITUTION OF INDIA

AND

IN THE MATTER OF MADHYA PRADESH INDUSTRIAL RELATION ACT, 1960

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 645 of 2002

Petitioner : V.B. Bali

Versus

Respondents : The Managing Director Steel Authority of India Ltd. & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

None appears for the petitioner.

None appears for the respondents.

ORDER

(23rd August, 2006)

1. The petitioner was appointed as Recorder in the Respondent Steel Plant at Bhilai by order dated 6.1.1987 (Annexure P/1).

2. A charge sheet of following charges,

"CHARGES:

Shri Vijay Bahadur Bali, P. No. 148087, recorder working in Sports and Recreation Group (Cultural), Bhilai Steel Plant has been guilty of remaining absent from duty without leave or without sufficient cause in as much as he is absenting from duty from 5-7-89 onwards unauthorisedly till date.

Shri Vijay Bahadur Bali has thus committed an act of misconduct under Disciplinary and Appeal Rules"

along with the memorandum of allegations was issued to the petitioner.

3. The petitioner filed his representation on 26.2.1990 (Annexure P/3) stating that the petitioner remained

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absent due to injury. He joined the duty on 3/4th October, 1989 and was not allowed to join thereafter.

4. The enquiry was held against the petitioner. The Additional CPM (NW/LAW) agreeing with the enquiry, passed an order of removal of the petitioner from service by order dated 15.5.1990 (Annexure P/4).

5. Being aggrieved, the petitioner filed an application before the Labour Court at Durg in Case No. 52/MPIR/91. The Labour Court by order dated 23.3.1994 (Annexure P/7) without considering the issue "as to whether the enquiry was invalid", came to the conclusion that the punishment of removal from service was disproportionate to the charges found proved against the petitioner. Thus, in exercise of his powers under Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960 converted the punishment of removal from service to withholding of the salary. The Labour Court accordingly directed reinstatement to the service without back wages.

6. The Respondent Steel Plant filed an appeal before the Industrial Court, Raipur being Appeal No. 184/M.P.I.R./94. The Industrial Court by order dated 13.2.1995 (Annexure P/8) remanded back the matter and directed the Labour Court to decide the issue No-1 i.e. whether the enquiry was invalid, before deciding other issues. Accordingly, the order dated 23.3.1994 (Annexure P/7) passed by the Labour Court was set aside and the matter was remanded back for decision afresh

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after deciding the issue No-1 i.e. whether the enquiry was invalid. The Labour Court adjudicated on the issue No-1 i.e. whether the enquiry was invalid. The Labour Court by order dated 8.1.1996 held that the enquiry was vitiated and as such invalid.

7. The Labour Court in its order dated 9.5.2000 (Annexure P/9) examined the material itself and came to the conclusion that the petitioner had not produced sufficient evidence to controvert the allegations of misconduct of remaining absent from 4.7.1998 to 25.1.1991. Since, the petitioner failed to produce sufficient evidence stating the reasons for remaining absent for a long period for about 167 days. The Labour Court found that the order dated 15.5.1990 (Annexure P/4) passed by the respondent No. 1 was valid and proper. Accordingly, application of the petitioner was dismissed.

8. The Industrial Court in Civil Appeal No. 155/M.P.I.R. {A}II/2000 dismissed the appeal of the petitioner by order dated 3.11.2001 (Annexure P/11) confirming the order passed by the Labour Court.

9. The petitioner has impugned the order dated 3.11.2001 (Annexure P/11) on the ground that once the departmental enquiry has been found bad and invalid, the petitioner could not have been denied the benefit of reinstatement in service. The petitioner relies on the decision of the Supreme Court in the case of Neeta Kaplish Vs. Presiding Officer, Labour Court & another

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(1999) 1 ILLJ 275 in support of his contention that once the enquiry has been found to be defective, the Tribunal can call upon the management or the employer to justify the action taken against the workman and to show by fresh evidence, that the termination or dismissal order was proper. If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman.

10. In the present case, the management/employer was not called upon to justify the punishment of removal from service, imposed on the petitioner after the enquiry was found bad and invalid, in view of the settle principle of law, as stated above, the Labour Court has not called upon the management/employer to justify its action of removal of the petitioner from service when admittedly the Labour Court has found that the enquiry was bad and invalid by order dated 8.1.1996, which remains unchallenged and has attained finality.

11. For the reasons stated-above, the impugned order dated 9.5.2000 (Annexure P/9) and order dated 3.11.2001 (Annexure P/11) are set aside and the respondent No. 1 is directed to reinstate the petitioner in service without back wages. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu